

## Questions & Answers on ESA Status Update – December 2003

### **Q. What was the original decision on listing Southern Resident killer whales under the Endangered Species Act?**

A. In July 2002 NOAA Fisheries announced its [determination](#) that listing North Pacific Southern Resident killer whales (*Orcinus orca*) as threatened or endangered under the Endangered Species Act (ESA) was [not warranted](#) because Southern Resident killer whales did not constitute a species, subspecies or distinct population segment (DPS) as defined by the ESA. NOAA Fisheries also announced its intention to reconsider the taxonomy of killer whales within four years, or as new information became available, in recognition of the uncertainties about the taxonomic status of killer whales worldwide.

### **Q. Was NOAA's ESA "not warranted" finding in error?**

A. On Dec. 18, 2002, the Center for Biological Diversity (and other plaintiffs) initiated a lawsuit challenging NOAA Fisheries' not warranted finding. The U.S. District Court for the Western District of Washington issued an [order](#) on Dec. 17, 2003, which set aside NOAA Fisheries' not warranted finding and remanded the matter back to the agency for redetermination of whether the Southern Resident killer whales should be listed under the ESA. The court found that NOAA Fisheries relied upon the global *Orcinus orca* taxon rather than using more recent, but inconclusive, evidence that indicates that all killer whales may not belong to the same taxon. The court acknowledged that there is a lack of consensus in the field of taxonomy regarding precise formal redefinition of killer whales, and that gathering evidence to achieve agreement is difficult. However, the court remanded the matter back to NOAA Fisheries to reconsider the status of Southern Residents in light of available scientific information supporting alternatives to the outdated global taxon.

### **Q. What is NOAA doing in response to the court's order?**

A. NOAA will not appeal the court's decision. NOAA Fisheries will work to evaluate the best available scientific information to update its status review and make a new determination by Dec. 17, 2004, on whether Southern Resident killer whales should be listed under the ESA.

### **Q. How will NOAA update the status review for Southern Resident killer whales?**

A. NOAA Fisheries has reconvened its Biological Review Team (BRT) to review and evaluate the most recent scientific and commercial information available on Southern Resident killer whales. The agency is requesting that interested parties submit pertinent information to assist with updating its status review. NOAA Fisheries published a *Federal Register* [notice](#) on Mar. 2, 2004, requesting additional information to update its status review and assist with a new determination of whether Southern Resident killer whales warrant listing under the ESA.

### **Q. Does this ESA review affect the ongoing efforts to develop a Conservation Plan for Southern Resident killer whales under the Marine Mammal Protection Act (MMPA)?**

A. No. NOAA Fisheries will continue developing a Conservation Plan for Southern Residents while preparing an updated ESA status review in response to the court's ruling. A Conservation Plan under the MMPA is patterned after Recovery Plans under the ESA, so ongoing efforts in [conservation planning](#) can be directly applied to the recovery planning process should there be a change in the ESA status of Southern Residents.